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Attorney Docket No. 391327

**REMARKS**

Claims 1-39 are pending in the application. Claims 21-27 are withdrawn without prejudice. Claims 1, 14, and 28 are currently amended.

Claim 1 has been amended to recite that the network is configured for physical location to reside at the precinct level, for example as described on page 12 at lines 5-6 and other places in the specification, and to recite that the program logic is resident at the controller, for example, as is recited on page 19 at lines 5-14 of the specification. Claim 14 has been amended to change the dependency as required by the examiner. The dependency is now from claim 13, as opposed to claim 12. Claim 28 has been amended to recite that the rotary input device is used to move a ballot focus on the electronically configurable display that identifies a voter choice in the casting of ballots. This finds support, for example, on page 41 at lines 11-15 and other places in the specification.

Claims 1, 3-5, 7-10 and 13-20 stand rejected under 35 U.S.C. §102(b) over United States Patent No.; 76,311,190 issued to Bayer et al. Under the "all elements" rule, an anticipatory reference must expressly or inherently contain each and every limitation of the claims. That is not presently the case where Bayer '190 is merely a system to produce a voter survey response. Bayer '190 is nothing more than a polling system to provide voter opinions at a particular point in time. Bayer '190 does not teach or suggest "a controller configured with an interactive menu system permitting a poll worker to preside over an election." This must be the case because a "poll," such as a Gallup poll in accordance with the teaching of Bayer '190, is completely different from an actual election where votes are cast to decide an election outcome.

Bayer '190 is inoperable for the purpose that is claimed. It would be illegal in most voting jurisdictions to adapt the Bayer '190 system for election use in the casting of votes. A complex body of statutes and regulations apply to the conduct of elections and

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the manner of using secure ballot information in a form that has been preapproved by the headquarters of the election jurisdiction. The polling system of Bayer '190 is not a formal system of the type that is used in an election so it is not burdened by these requirements. Bayer '190 operates in a relative informal way, for example as described in the passage from column 13 at line 48 to column 18 at line 44 in context of Figs. 10-14. The system of Bayer '190 uses cookies and Internet transmissions to gather informal polling results, but these instrumentalities are incompatible with the stringent data integrity requirements that are mandated for elections.

As is now claimed, the system operates at a different level than does Bayer '190, namely, at the election precinct level in contrast to that of an Internet server. The passage in Bayer '190 from column 3 at line 48 to column 18 at line 44 in context of Figs. 10-14 shows that the poll surveys are built by a "network server 12" which is not shown in Figs. 10-14 but is present in Fig. 1. Bayer '190 column 5 at lines 15-25, the network is the World Wide Web or a wide area network, where the "network server 12" is in the category of devices that are "often referred to as web sites." Thus, the processing that is shown, for example with respect to Figs. 10-14, occurs using a web site server as the "controller." Within the confines of Bayer '190, this is not physically located in a precinct as is claimed, rather, there is no precinct at all because this is not an election. The "voter network client 18" that is shown in Bayer '190 is merely a user PC connected to the World Wide Web or a WAN.

The defendant claims have additional features that are separately patentable in their own right. Bayer '190 is completely silent as to the ballot focus that is recited in claims 3-5. In the system of Bayer '190 there are no ballots and the controller does not dispense the poll questions according to voter eligibility as is recited in claim 8. There is no unique identifier allocated to an election-voter as is recited in claims 9-10. In context of claims 13-14, Bayer

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'190 does not teach or suggest use of the RS-485 protocol, which incidentally makes no sense in the Bayer '190 standalone voter clients 18. This is because Bayer '190 has no plurality of voter clients connected in serial so there is no use for a chain protocol. The concept of suspended early voting as recited in claim 15 is foreign to Bayer '190 because one may take a poll at any time. Bayer '190 is completely silent as to the indicia verification means of claim 16, and while this concept is useful to assure the stringent data integrity standards for election use it has no demonstrable benefit for use in conducting polls. Also, in taking polls, complex systems of preserving voter anonymity are not generally needed, and Bayer '190 does not teach what is recited in claims 18-19. Bayer '190 does not teach or suggest the audit trail of claim 20.

For the reasons discussed above, claims 1, 3-5, 7-10 and 13-20 distinguish Bayer '190, which is not used for voting in an election and is not configured for physical location and control at the precinct level.

Claim 2 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bayer '190 in view of United States Patent No. 5,583,329 issued to Davis III et al. The Applicant respectfully traverses this rejection.

Bayer '190 is applied as above, but does not show a liquid crystal display. The office applies Davis '329 for to show a liquid crystal display; however, the combination does not show the distinguishing features that are discussed above with respect to Bayer '190. Furthermore, Bayer '190 is nonanalogous art and cannot be properly combined with Davis '329 where those skilled in the art would not choose to consult the art of polling systems which are not required to meet the stringent data integrity standards of voting systems.

Claim 6 stands rejected under 35 U.S.C. §103(a) over Bayer '190 in view of United States Patent No. 6,250,548 issued to McClure. Bayer '190 is applied as discussed above.

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McClure is used to show machine instructions permitting interactive configuration of the voting station prior to the opening of polls. With all due respect, it seems that the rejection is in error. The passage that is relied upon from McClure '548 does discuss the need for operator verification of physical-mechanical systems, such as lever-actuated systems, but in a DRE context is discussing the advantages of not having to do this by virtue of "design innovations which preclude[s] the need for set up," as recited in column 38 at lines 58-60. Therefore, the passage from McClure '548 teaches away from what is claimed by reciting that this setup is not needed. Furthermore, the combination of Bayer '190 and McClure '548 does not overcome the distinguishing features of the claims that are discussed above with respect to Bayer '190 alone, Bayer '190 also being nonanalogous art and used for a different purpose so that it is not properly combinable with McClure '548.

Claims 11 and 12 stand rejected over Bayer '190 in view of United States Patent No. 5,821,508 issued to Willard. Bayer '190 is applied as discussed above, Willard '508 is used to show a disabled access unit. The combination of Bayer '190 and Willard '508 does not overcome the distinguishing features of the claims that are discussed above with respect to Bayer '190 alone, Bayer '190 also being nonanalogous art and used for a different purpose making it not properly combinable with Willard '508.

Claims 28-33 and 36-39 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bayer '190 in view of United States Patent No. 3,941,976 issued to Huhn. Bayer is applied as discussed above. Huhn '976 is used to show a rotary input device. Amended claim 28 clarifies that the rotary input device is used to move to a ballot focus on the display (see also the last paragraph on page 4 of the specification). Even in combination, the references are silent as to the use of a ballot focus and this specific manner of configuring the rotary input device to indicate a voter choice. Bayer '190 is also nonanalogous art and inoperable for the casting of votes in an election.

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Claims 34 and 35 stand rejected under 35 U.S.C. §103(a) over Bayer '190 and Huhn '976 as applied above, and in further view of Willard '508. Even in combination, the references are silent as to the use of a ballot focus and this specific manner of configuring the rotary input device to indicate a voter choice.

It is respectfully submitted that the claims are allowable for the reasons discussed above, and Applicant's attorney earnestly solicits a Notice of Allowance.

Applicant hereby authorizes the required \$510 fee for the three month extension of time to be charged to Deposit Account No. 12-0600. Applicant believes no further fees are due, however, if any fee is deemed necessary in connection with this Amendment and Response, please charge Deposit Account No. 12-0600. Applicant believes no other fees are currently due, however, if any fee is deemed necessary in connection with this Amendment and Response, please charge Deposit Account No. 12-0600.

Respectfully submitted,

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By

  
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